

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 32**

(Livermore, CA)

AMERICAN MEDICAL RESPONSE,
INCORPORATED

Employer

and

Case No. 32-RC-5234

NATIONAL EMERGENCY MEDICAL
SERVICES ASSOCIATION

RC Petitioner

and

AMERICAN MEDICAL RESPONSE,
INCORPORATED

Employer

and

Case No. 32-RD-1450

ERIC STEPHENS, an Individual

RD Petitioner

and

SEIU LOCAL 250, HEALTHCARE
WORKERS UNION, AFL-CIO

Union

DECISION AND DIRECTION OF ELECTION

American Medical Response, Incorporated, herein called the Employer, operates an emergency and non-emergency medical transportation service in various locations in Northern California. SEIU Local 250, Health Care Workers Union, AFL-CIO, herein called Local 250, represents a collective bargaining unit made up of certain of the Employer's employees in Northern California. Eric Stephens, herein called the RD Petitioner, filed a decertification

petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to decertify Local 250 as the currently recognized collective bargaining representative of the Employer's employees in the collective bargaining unit represented by Local 250. The National Emergency Medical Services Association, herein called NEMSA, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent the employees in the collective bargaining unit currently represented by Local 250. A hearing officer of the Board held a hearing in this case, and Local 250 filed a post-hearing brief, which I have duly considered.

As evidenced at the hearing and in Local 250's brief, the only issues in dispute are whether NEMSA is a labor organization and whether the unit described in the decertification petition and the certification petition is an appropriate unit.¹ The Employer and NEMSA contend that the overall unit, which includes all of the Employer's employees currently represented by Local 250 in the Employer's Northern California business operations, is the currently recognized unit, is consistent with the unit description in the applicable collective bargaining agreement, and is an appropriate unit. Local 250 contends that the petitioned-for overall unit is not appropriate, that the currently recognized unit is actually a series of county wide units, and that the county wide units are the appropriate units. At the hearing, Local 250 also disputed the labor organization status of NEMSA, although Local 250 did not argue this point in its brief.

I have considered the evidence and arguments presented by the parties, and, as discussed below, I have concluded that NEMSA is a labor organization, and that the unit described in the decertification petition and the certification petition, as amended at the hearing, is appropriate. Accordingly, I have directed an election in a unit that consists of approximately 2400 employees.

¹ The parties agreed that there are no other issues in dispute with regard to the processing of these petitions.

To provide a context for my discussion of this issue, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that support my conclusions on each of these issues.

I. THE EMPLOYER'S OPERATION AND ITS RELATIONSHIP WITH LOCAL 250

The Employer, a Delaware Corporation, is engaged in the business of providing emergency and non-emergency medical transportation in 32 states, including California. The Employer has facilities in various locations within Northern California, including a facility located in Livermore, California, which is the administrative office for the Employer's Northern California operations.

The Employer's chief executive officer, Lou Meyer, has an office at the Employer's Livermore facility, as does the Employer's vice president of Valley operations and its vice president of Bay/Coastal operations. The two vice presidents supervise the operations directors who are assigned to work in their respective areas. Reporting to the operations directors are the operations managers. In most instances, there are operations managers for each operational area within a county; for example, in Stanislaus County there are two operations managers, one for field operations and one for dispatch operations. However, some operations managers and directors cover multiple counties. The operations managers are responsible for directing the work of the field supervisors, who, in turn, direct the work of the Employer's employees who are at issue in this case.

Local 250 has been the collective bargaining representative of certain employees of the Employer in Northern California since at least 1995. That representation has been embodied in two successive collective bargaining agreements. The first of these agreements, which was effective by its terms from October 12, 1996 through June 30, 2001, covered 12 separate units.

Three of those units consisted of employees from more than one county; for example, Unit A was comprised of emergency medical technicians, drivers, and unit members serving as acting supervisors in Alameda, Santa Clara and Contra Costa Counties. During negotiations for the current collective bargaining agreement, herein called the Agreement, which is effective by its terms from July 1, 2001 through June 30, 2006, Local 250 proposed that the 12 units be combined to form one overall unit. The Employer accepted that proposal, and the unit description in the Agreement describes a single multi-county unit, which covers the employees listed in the unit description in the instant petitions.²

The recognized unit in this case, herein called the Unit, is as follows:

All full-time and regularly scheduled part-time registered nurses, EMT-1's, EMT-2's, EMT-P's, Drivers, Wheelchair Van Drivers, Dispatchers, System Status Controllers, Call takers, Pre-Billers, and Billers (except for Pre-Billers and Billers in Stanislaus, San Francisco, Sacramento, Shasta and San Joaquin Counties) including bargaining unit personnel serving as acting supervisors in the following counties: Monterey, Tulare, Santa Cruz, Santa Clara, San Mateo (except EMT-P's covered in a separate Agreement) Stanislaus (excluding Turlock Operations), Alameda, San Francisco, Contra Costa, San Joaquin (excluding Tracy Operations), Calaveras, Marin, Solano, Sonoma, Yolo, Sacramento, Placer and Shasta. In addition, all full-time and regularly scheduled part-time Clerk 1's, Clerk 2's Stockers, Washers, Couriers and Schedulers in the following counties: Santa Clara, Alameda, Contra Costa, San Mateo, Stanislaus (Vehicle Service Technician only) and Tulare (Clerk 1's and Clerk 2's only). Also including: all full-time and regularly scheduled part-time CCT's and EMT/CCT's in Alameda, Contra Costa, San Mateo and Yolo Counties; Paramedic/CCT's in Contra Costa, Monterey, Placer, Sacramento, San Joaquin-Calaveras, and Santa Clara Counties, CCT/RN's in Alameda, Contra Costa, Monterey, Sacramento, Santa Clara, and Sonoma Counties; Mail Room Clerks in Alameda County; Dispatchers and Call Takers in Modesto and Sacramento Dispatch Centers, EMT1's and Paramedics in San Benito County; Vehicle Service Technicians (VST) in Contra Costa, San Joaquin-Calaveras, San Mateo and Santa Clara Counties; Gurney Van Drivers in Sacramento County, Pre-Billing

² The composition of the unit has also been affected by the Employer's acquisitions of various medical transportation businesses in Northern California. Pursuant to its Accretion Clause Section 1.3 in its agreements with Local 250, the Employer has recognized Local 250 as the representative of the Local 250-represented employees who had been employed by the companies it acquired.

Representatives and Technicians in San Mateo County; and Service Receipt Processor/Pre-Billers in Santa Clara County. Excluding Advanced Life Support (ALS) paramedics in Turlock, Tracy and San Mateo County, all other personnel including guards and supervisors as defined by the National Labor Relations Act, as amended.³

The employees in the Unit are all covered by the terms of the Agreement, and, other than certain limited differences specified in the side agreements to the Agreement, the employees share the same terms and conditions of employment. As provided for in the Agreement, Unit employees all receive the same employee benefits, such as health insurance and 401(k) Plan. Moreover, all of the Unit employees are subject to identical personnel and labor relations policies and procedures, under the unified and centralized control of the Livermore administrative offices. In addition, all Unit employees are subject to the same discipline, grievance and arbitration procedures, which are set forth in the Agreement. I also note that there is little or no difference in the job responsibilities of the various classifications throughout the different counties; for example, EMT's throughout the various counties have virtually the same job duties and responsibilities, and they are required to meet the same licensing and certification requirements.

As noted by Local 250, there are some differences in the terms and conditions of employment of Unit employees, depending on the county in which they are employed. With regard to scheduling, there are variations in procedures that reflect the different sizes of the

³ The Unit description appears as amended by NEMSA and by the RC Petitioner at the hearing to reflect more precise job titles, newly-created positions, and/or variations of pre-existing titles that are not mentioned in the contractual bargaining unit description, but which have been included in the existing bargaining unit by the agreement and actions of the Employer and Local 250. Local 250 agrees that the unit, as amended at the hearing, accurately reflects all of the job classifications of the Employer's employees in Northern California who are represented by local 250. Also, the amended Unit description reflects the exclusion of the ALS paramedics at Turlock and Tracy, who are represented by a different union, as well as the exclusion of the ALS paramedics in San Mateo County. The parties stipulated that the ALS paramedics in San Mateo County are a separate appropriate unit and that the petitions pending in Region 20 covering those employees will remain in Region 20 for processing. Also, the parties agree that Pre-Billers and Billers in Stanislaus, San Francisco, Sacramento, Shasta and San Joaquin Counties are not represented by Local 250 and would not belong in any appropriate unit found in this case.

county operations. For example, scheduling is done differently in San Joaquin County, where there are only 150 employees, compared to Contra Costa or Alameda Counties, where the Employer employs approximately 400 employees in each county. Also, wage scales differ among the counties, based on the differing costs of living throughout Northern California. Similarly, unit employees in San Francisco, a very high cost of living city, receive a parking benefit that employees in other counties do not receive. As previously stated, these variations in some of the terms and conditions of employment of employee in the Unit who are employed in different counties are provided for in various side agreements to the Agreement.

The evidence in this case also shows that there is some interchange among employees at different facilities. The Employer maintains a cross county scheduling pool to cover overtime shifts. Employees from any county may volunteer to work overtime in other counties by placing their names on the scheduling pool list. If there is an overtime shift available in Stanislaus County, for example, and no Stanislaus County employees want the shift, the shift is then offered to the employee with the most seniority on the scheduling pool list. Employees dispatched through the pool will receive the pay rates effective in the county in which they fill the overtime shift. In addition, there have been numerous permanent transfers of unit employees from one county to another. There have been four such transfers in 2004, there were 17 in 2003, 13 in 2002, 26 in 2001, and 33 in 2000.

II. NEMSA'S STATUS AS A LABOR ORGANIZATION

NEMSA was established as a non-profit association in about February 2004 and was incorporated under the laws of the state of California in about March 2004. NEMSA has also

registered with the Department of Labor as a labor organization. Its president, Torren Colcord, is an employee of the Employer. Colcord designated himself as president and also selected the other officers of NEMSA. The NEMSA officers participate in the operation of NEMSA and all of them are employees of the Employer. Employees also attend NEMSA meetings. NEMSA's constitution and by-laws were drafted by NEMSA's attorney, Timothy Talbot, with input from Colcord and Timothy Bonifay, a former Local 250 representative who now does labor relations and contract negotiations work for NEMSA.

In addition to seeking to represent the employees in the bargaining unit at issue in this case, NEMSA represents a unit of employees in Oak Valley District Hospital (the Hospital). NEMSA is currently engaged in bargaining with the Hospital for an initial collective bargaining agreement. As of the date of the hearing, it had reached agreement on a union security provision and had reached tentative agreements on other provisions. According to Bonifay, who is NEMSA's negotiator in the collective bargaining with the Hospital, NEMSA has a bargaining committee made up of employees of the Hospital, and they will have input in the bargaining process.

III. POSITION OF THE PARTIES

As noted above, NEMSA, the RC Petitioner and the Employer take the position that the Unit, which is a multi-location unit covering all of the Employer's employees currently represented by Local 250 in the various counties in Northern California, is an appropriate unit. Local 250 contends that the Unit is not appropriate, and that the employees it represents should be viewed as being included in separate appropriate countywide units.

At the hearing, Local 250 also disputed the labor organization status of NEMSA. NEMSA takes the position that it is a labor organization within the meaning of the Act.

IV. ANALYSIS

With regard to the issue of NEMSA's labor organization status, the evidence reveals that NEMSA is an organization in which employees participate, and which exists for the purpose of dealing with employers concerning employees' conditions of work. In this regard, the record shows that the officers of NEMSA are employees of the Employer, NEMSA holds membership meetings, and employees of the Hospital have been included on the NEMSA bargaining committee that is bargaining with the Hospital. As such, I conclude that NEMSA is a labor organization within the meaning of Section 2(5) of the Act.

I also conclude that the Unit is an appropriate unit and that an election is warranted pursuant to both the RD and the RC petitions. With regard to the issue of the appropriateness of the Unit, it is well established that, in processing a decertification petition in this type of case, the currently recognized bargaining unit is the appropriate unit. See *Booth Broadcasting Co.*, 134 NLRB 817, 822 (1961), and *Kaiser Foundation Hospital*, 312 NLRB 933, 934 (1993). Similarly, with regard to processing RC-certification petitions, the Board has long held that it will not disturb an established bargaining relationship unless required to do so by the dictates of the Act or other compelling circumstances. See *Great Atlantic & Pacific Tea Co.*, 153 NLRB 1549, 1550 (1965). Here, the Unit, as named in the amended RC and RD petitions, is the currently recognized unit, and therefore it is an appropriate unit.

I have considered Local 250's argument that the Unit is not appropriate. Local 250 states that the differences in some of the terms and conditions of employment of some of the Unit employees who work in different counties establish that there is no single recognized unit, and that the Employer and Local 250 have actually created a series of countywide units. The evidence shows otherwise. Most significantly, the collective bargaining agreement language

makes it clear that the Employer and Local 250 agreed to a single all Northern California unit. No authority has been brought to my attention in which the existence of side agreements to a collective bargaining agreement, which provide for some varying site specific terms and conditions of employment, are held to destroy an agreed-upon multi-location unit. Indeed, it is not unusual for parties to have such site-specific terms and conditions of employment in wide-spread multi-location units. I therefore conclude that the agreement to have some different site-specific terms and conditions of employment did not destroy the Unit and lead to the de facto creation of separate countywide units.

Local 250 also argues that because of the differences in the terms and conditions of employment, the limited multi-location bargaining history, the long distances between the different facilities, and the lack of interchange among many of the Employer's facilities, the employees in the Unit do not share a sufficient community of interest to constitute an appropriate unit. Local 250 further argues that, notwithstanding the collective bargaining agreement unit language, the above described factors undermine the community of interest among the Unit employees and that the largest appropriate units would be countywide units. However, as noted above, the Board normally will not disturb an historical, multi-location unit absent compelling circumstances. *Trident Seafoods*, 318 NLRB 738 (1995). The party challenging an historical unit bears the burden of showing that the unit is no longer appropriate, and the evidentiary burden is a heavy one. *Id.* and see, e.g., *P. J. Dick Contracting*, 290 NLRB 150, 151 (1988).⁴ Here Local 250 has not met its burden. Thus, although Local 250 now challenges the historical significance of the multi-location unit that it had previously sought, the Board has determined that even a one year bargaining history on a multi-plant basis is sufficient to bar a petition

⁴ The Board has applied these principles not only to decertification petitions, but to representation petitions as well. *Mo's West*, 283 NLRB 130 (1987) and *Anheuser-Busch, Inc.*, 246 NLRB 29, 32 (1979).

seeking an election in a segment of that unit. See *Arrow Uniform Rental*, 300 NLRB 246 (1990). Here there was more than a one-year history for the multi-location unit. I also note that the evidence affirmatively shows that the Unit employees share a sufficient community of interest to warrant a decertification/certification election in this case. The Employer has centralized labor policies and procedures covering its Northern California employees, and the Agreement applies to all of the employees in the Unit. The bulk of the Unit employees' benefits are identical, and the wage system is essentially the same, even though the wage rates vary depending on the cost of living for the various counties. The Unit employees in the different counties also have very similar, if not identical job duties, and there is at least some interchange among the employees of certain of the counties. In light of the foregoing, the factors raised by Local 250 do not constitute "compelling circumstances" that would warrant disturbing the parties' historical, multi-plant unit. *Gibbs & Cox*, 280 NLRB 953, 955 (1986); *Anheuser-Busch*, 246 NLRB at 29; *Trident Seafoods*, at 739; *Met Electrical Testing Company, Inc.*, 331 872 (2000).

For the reasons set forth above, I conclude that the Unit is appropriate.

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
- 3 Local 250 is a labor organization within the meaning of Section 2(5) of the Act, and it claims to represent certain employees of the Employer.

4. NEMSA is a labor organization within the meaning of Section 2(5) of the Act, and it claims to represent certain employees of the Employer.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regularly scheduled part-time registered nurses, EMT-1's, EMT-2's, EMT-P's, Drivers, Wheelchair Van Drivers, Dispatchers, System Status Controllers, Call takers, Pre-Billers, and Billers (except for Pre-Billers and Billers in Stanislaus, San Francisco, Sacramento, Shasta and San Joaquin Counties) including bargaining unit personnel serving as acting supervisors in the following counties: Monterey, Tulare, Santa Cruz, Santa Clara, San Mateo (except EMT-P's covered in a separate Agreement) Stanislaus (excluding Turlock Operations), Alameda, San Francisco, Contra Costa, San Joaquin (excluding Tracy Operations), Calaveras, Marin, Solano, Sonoma, Yolo, Sacramento, Placer and Shasta. In addition, all full-time and regularly scheduled part-time Clerk 1's, Clerk 2's Stockers, Washers, Couriers and Schedulers in the following counties: Santa Clara, Alameda, Contra Costa, San Mateo, Stanislaus (Vehicle Service Technician only) and Tulare (Clerk 1's and Clerk 2's only). Also including: all full-time and regularly scheduled part-time CCT's and EMT/CCT's in Alameda, Contra Costa, San Mateo and Yolo Counties; Paramedic/CCT's in Contra Costa, Monterey, Placer, Sacramento, San Joaquin-Calaveras, and Santa Clara Counties, CCT/RN's in Alameda, Contra Costa, Monterey, Sacramento, Santa Clara, and Sonoma Counties; Mail Room Clerks in Alameda County; Dispatchers and Call Takers in Modesto and Sacramento Dispatch Centers, EMT1's and Paramedics in San Benito County; Vehicle Service Technicians (VST) in Contra Costa, San Joaquin-Calaveras, San Mateo and Santa Clara Counties; Gurney Van Drivers in Sacramento County, Pre-Billing Representatives and Technicians in San Mateo County; and Service Receipt Processor/Pre-Billers in Santa Clara County. Excluding Advanced Life Support (ALS) paramedics in Turlock, Tracy and San Mateo County, all other personnel including guards and supervisors as defined by the National Labor Relations Act, as amended.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they no longer wish to be represented for purposes of collective bargaining by SEIU LOCAL 250,

HEALTH CARE WORKERS UNION, AFL-CIO; and whether they wish to be represented for purposes of collective bargaining by NATIONAL EMERGENCY MEDICAL SERVICES ASSOCIATION. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before **July 30, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (510) 637-3315. Since the list will be made available to all parties to the

election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **August 6, 2004**. The request may **not** be filed by facsimile.

Dated: July 23, 2004

William A. Baudler, Acting Regional Director
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